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No. 84-520

In The

Supreme Court of the United States

October Term, 1984

E. A. GREGORY and VONNA JO GREGORY,
Petitioners.

v.

UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR A WRIT OR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONSE

Counsel for Petitioners

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONSE

ISSUE

Whether the matters complained of in the petition are sufficiently certain and fixed to warrant review by this Court.

ARGUMENT

Whether an issue is ripe for judicial review depends upon the fitness of the issue for judicial decision and the hardship to the parties if court consideration is withheld. Abbott Labs v. Gardner, 387 U.S. 136, 149 (1967). This case is ripe for review.

The issues are fit for review because the ruling of the Eleventh Circuit on those issues precludes further litigation before any tribunal other than this Court. The Eleventh Circuit specifically stated:

> "We affirm the holding of the district court in all respects as to the evidence considered." (Pet. App. 26B).

The government is mistaken where, in its memorandum, it states that:

> "On remand, the district court will have to determine whether the government made any use of their immunized testimony." (Memorandum p. 5).

The evidence that has been previously challenged by the Gregorys will not be dealt with on remand. The Eleventh Circuit remanded the case

> "..for the limited purpose of allowing the district court to ascertain whether the portions of the Government's evidence at trial not challenged by the Gregorys and the evidence before the grand jury, not formerly considered by the district court, were in fact 'derived from a legitimate source wholly independent of the compelled testimony.'" (Pet. App. 28B).

Thus, with regard to the trial and grand jury

evidence previously challenged by the Gregorys, this is the petitioners' last opportunity to redress the errors complained of in their petition.

Furthermore, if this court withholds its consideration, the petitioners will suffer irreparable damage. The unconstitutional analysis complained of in the petition was applied to the evidence most likely to have been obtained in violation of the petitioners' Fifth Amendment rights. With regard to that evidence, the government stated in its initial brief to the Eleventh Circuit:

> "A complete reading of the immune testimony (Def. Ex. 1) reveals that the Gregorys pointed out to the court, through the testimony of Linda Benson and the exhibits, every conceivable place in the testimony which could have led, either directly or indirectly, to anything connnected with the criminal investigation. Ms. Benson had available to her all of the Grand Jury testimony and 302 interview forms involved in the case, and traced out every possible connection between the immune testimony and the investigation." (Government's initial brief, U. S. Court of Appeals, Eleventh Circuit, p. 62).

If that statement is accurate, the result of the hearing on remand is a foregone conclusion unless this Court intervenes.

The lower courts have made a mockery of the petitioners' Fifth Amendment rights and of this Court's holdings in Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964) and Kastigar v. United States, 406 U.S. 441 (1972). By ruling that government agents can listen to and study immunized testimony and by reasoning that the government would have come up with the same evidence anyway, the lower courts violated the petitioners' Fifth Amendment rights. The errors complained of were applied to the evidence most likely to have resulted from the immunized testimony. Those errors can only be remedied by this Court.

WHEREFORE, petitioners respectfully request that this Court grant the writ of certiorari.

Respectfully submitted,

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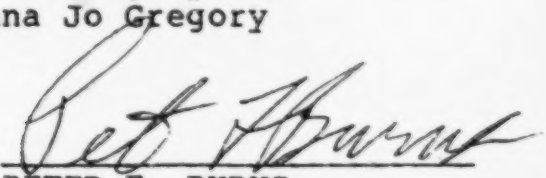
BY: 
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